



Internal Audit Final Report

Section 106 Agreements

Directorate: Environmental and Planning Directorate
Date: 16th February 2007

Contents

- 1 Introduction
- 2 Objectives of the Audit
- 3 Management Summary & Audit Opinion
- 4 Findings and Recommendations
- 5 Management Action Plan

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1. Introduction

- 1.1. An audit of the system in place to manage Section 106 agreements was carried out between March and July 2006 as part of the internal audit plan for 2005/06. The negotiation of S106 agreements is the responsibility of the Planning Department within the Environmental and Planning Directorate.
- 1.2. Section 106 agreements have not previously been internally audited by the Authority. Therefore agreements selected for testing during the audit have been taken from a list of agreements entered into since 1st January 1990 and not just agreements entered into in 2005/06.
- 1.3. A Section 106 agreement is a legal agreement to provide infrastructure and services on or off the development site where this is not possible through planning conditions. The legislative basis for planning obligations is Section 106 of the Town and Country Planning Act 1990. Such agreements have become increasingly important to the provision of public services including highways, recreational facilities, education and affordable housing. The Section 106 system is an important way of securing benefits for the community.
- 1.4. The Planning department maintains a record of all planning applications on the Ocella system. When approval is granted with a S106 agreement attached, the Ocella system is updated to reflect this.
- 1.5. Since January 1990 the Authority has entered into over 60 Section 106 agreements. The main departments with whom agreements have been negotiated are Parks and Play Areas and Transport and Engineering. Agreements have also successfully been negotiated with the Education and Housing departments.
- 1.6. According to the Ocella system £2,274,975 has been secured since January 1990 as a result of 47 S106 agreements where money was to be provided. However the system is not up to date in respect of how much of this money has been received and furthermore, how much has already been spent. In a further 16 agreements, it is the responsibility of the developer to undertake the work, such as improving infrastructure, building parks, etc.
- 1.7. In August 2006 the Audit Commission published a Value for Money self assessment guide entitled Improving Performance on Section 106 agreements. The report explains how the economy, efficiency and effectiveness principles of Value of Money can be applied to S106 agreements. A copy of this report can be found on the Audit Commission's web site www.audit-commission.gov.uk.
- 1.8. This report sets out the findings of the review and makes recommendations, where it is felt that improvements in financial and non-financial administration could be made.

2. Objectives of the Audit

2.1. The main objectives of the audit are to ensure:-

- Consultation takes place with all relevant parties in the set timeframe prior to decisions being made.
- Where departments / directorates have expressed an interest in an application, that further consultation takes place.
- Appropriate approval is sought prior to a development commencing and that appropriate information is available prior to the approval decision.
- Justification is sought from departments / directorates with regard to the costs implications of a S106 agreement.
- The Authority's Legal Department have been suitably involved when S106 agreements are negotiated.
- Contracts are in place for all S106 agreements and adequate records are retained of these by the Legal Department.
- The information contained on the Planning Departments Ocella system is up to date and contains complete information.
- The Planning and Development Committee are kept informed of S106 agreements and that the information presented to them is accurate.
- Departments / directorates have a nominated person who is responsible for the management and monitoring of S106 agreements.
- That monitoring of S106 agreements takes place at a department level.
- Departments are informed of the successful negotiation of S106 agreements and are provided with adequate details for their future monitoring.
- Where monies are due or work to be carried out, that this has taken place if the trigger point has been reached.
- Monies received have been ear-marked within the relevant department's accounts.
- A suitable system is in place to inform the Enforcement Officer of any breaches of S106 agreements, thus allowing action to be taken.

3. Management Summary & Audit Opinion

- 3.1. The Planning Department has made progress in recent months in identifying current Section 106 agreements and liaising with departments so as to establish the status of each agreement.
- 3.2. Whilst conducting the audit a number of strengths were identified as being in place. The Planning department has a good system in place to negotiate S106 agreements which generally incorporates consultation with all necessary parties and all potential agreements referred to the Planning and Development Committee.
- 3.3. The following key issues were identified during the audit which need to be addressed:-
 - Improvements needed in internal consultation relating to large multi-department projects.
 - A lack of monitoring after an agreement is successfully negotiated and before money is received.
 - Limited feedback to the Planning Department on the progress of agreements.
- 3.4. Due to the risks in the system that the Authority may not receive contributions due from developers under S106 agreements and that developments may not be monitored satisfactorily to enable compliance with agreements to be made, we are of the opinion that the current system of control provides **inadequate** assurance that all key risks are controlled.
- 3.5. We have made a number of recommendations categorised as merits attention, which include one off occurrences of failures in control, which maybe due to one off errors or weaknesses in the system, or where suggestions for improvement are made which do not impact on key risks. These are detailed in the main report and accompanying action plan, categorised as Merits Attention.
- 3.6. This audit report is a report of exception and therefore only where issues have been identified have they been commented upon.

Acknowledgement

- 3.7. A number of staff gave us their time and co-operation during the course of this review. We would like to record our thanks to all of the individuals concerned.

4. FINDINGS AND RECOMMENDATIONS

*The **objective** column details the objective of the system being reviewed.*

Risk may be viewed as the chance, or probability, of one or more of the organisation's objectives not being met. It refers both to unwanted outcomes which might arise, and to the potential failure to realise desired results.

*The **recommendations** column is categorised on the following basis:*

- Fundamental - action that is considered imperative to ensure that the organisation is not exposed to high risks;*
- Significant - action that is considered necessary to avoid exposure to significant risks;*
- Merits attention - action that is considered desirable and should result in enhanced control or better value for money.*

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.1	To ensure that where departments / directorates have expressed an interest in an application that further consultation takes place.	That those departments / directorates who have expressed an interest or a concern with an application do not get the opportunity to pursue this.	When reviewing 10 application files it was noted that in all cases correspondence between the Planning Officer and the relevant department appeared to have taken place via email, memo, etc. It is felt that this approach is likely to be the most suitable for the majority of applications received where a S106 is only being negotiated with one department. In contrast, where multiple departments need to be consulted and consequently raise issues with an application, then it is felt that this approach may not be the best. For large applications, such as Marlas Farm, where a number of departments are consulted, there is no evidence to suggest that there been multi department project groups held between all interested parties. This was confirmed through discussions with relevant staff in the departments. The lack of a collective approach may result in each department stating to the Planning Officer their own requirements without knowing the requirements placed by other departments. This may result in some departments having all of their needs met through a S106, whereas others lose out.	For larger applications where a number of departments request S106 agreements as part of the planning consent, project groups should be held between all relevant parties and the Planning Department to ensure a collective approach.	Significant

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.2	Justification is sought from departments / directorates with regard to the costs implications of a S106 agreement.	That a developer refuses to agree to a S106 agreement as the costs included in it can not be justified.	It was also noted that in one case (P/03/1211/FUL) an amount of £1,500 was originally requested as part of a S106 agreement for two sets of road markings. The applicant agreed to a S106 agreement but not to the amount. A revised amount of £660 was suggested by Transport and Engineering. It was finally agreed that the cost of one road marking (£330) should form the basis of the S106 agreement. The timeframe taken to agree this amount was over two months i.e. October to December 2003. Since this time further disputes have taken place with the applicant and it was only in June 2006 that a contract was signed. It must be questioned as to whether the time and effort incurred by Planning Department, Transport and Engineering and the Legal department staff in negotiating this S106 agreement is worth the £330 that will be received.	Consideration should be given to having a de-minimus level below which it becomes uneconomical to pursue the achievement of a S106 agreement.	Merits Attention
4.1.3	To ensure all money received from S106 agreements can be used for its intended purpose.	That money received by the Authority from S106 agreements has to be repaid.	Concerns were raised by one department visited about monies received in relation to approved applications for land on trading estates. The amount of money asked for is pro-rated based on the size of the development. Therefore the total amount received is dependant on the number of applications made and S106 agreements reached in a time period. It may be a number of years before enough applications are received and money obtained to carry out the intended work, by which time, some of the money may be due to be repaid as the timeframe for expenditure has been exceeded.	Schemes that are reliant on funding from a number of developers before they can progress, should be monitored by the Planning Department to ensure money is repaid where applicable.	Merits Attention
4.1.4	To ensure that the Authority's Legal Department have been suitably involved when S106 agreements are negotiated.	That legal opinion can not be ascertained at an early stage in the planning process.	It was established that the Senior Solicitor receives copies of the reports to be presented to the Planning and Development Committee and is in attendance at the meetings. The decision to involve the Senior Solicitor at an earlier stage in negotiations is at the discretion of the Planning Officer. Concern was expressed that in such cases, receipt of the P&D Committee reports prior to the meeting is the first time the Senior Solicitor will be made aware of an application and potential S106 agreement. This means there is little time prior to the meeting for queries to be raised with Planning Department staff or for potential legal issues to be resolved. Amendment sheets will then have to be produced and distributed.	Consideration should be given by the Planning Department to informing the Senior Solicitor at an early stage of all applications that are likely to contain a S106 agreement and some outline details of the proposed agreement. This will allow a legal opinion to be sought in a timely manner.	Merits Attention

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.5	To ensure that contracts are in place for all S106 agreements and adequate records are retained of these by the Legal Department.	That appropriate contracts are not in place resulting in disputes. That the suitable evidence is not retained by the Legal Department of S106 agreements entered into.	<p>For all 10 S106 agreements sampled a copy of the contract drawn up by the Legal Department was on file.</p> <p>The Legal Department maintain manual deed books that lists all contracts entered into by the Authority. Information about the deed number, the contracting parties and the agreement date are recorded in the books. For 10 S106 agreements sampled, 8 of them could be traced in the deed book. It is felt that due to the format of the books, it is feasible that the other 2 contracts were listed but either not noted by the auditor or they did not state that they were S106 agreements next to the contracting parties.</p> <p>A wider test was carried out to confirm the accuracy of the deed book in comparison to the information held on the Ocella system. As at 6th March 2006 54 S106 agreements were recorded within the Ocella system. A corresponding entry could be found in the deed book for 48 of these i.e. 6 could not be traced in the deed book. Again it is felt that this is likely to be due to the format of the deed book.</p>	The Legal Department should consider a more user friendly approach (i.e. electronically) of recording the details retained in the deed book.	Merits Attention

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.6	To ensure that the information contained on the Planning Departments Ocella system is up to date and contains complete information.	Inaccurate and / or incomplete information held by the Planning Department.	<p>When reviewing the deed book, five entries were noted as relating to a S106 agreement that could not be traced to a corresponding entry on the Ocella system. When queried with the Senior Planning Assistant, the application file for two of the entries was traced. The auditor was informed that the Ocella system had then been updated to reflect this information, however when an updated Ocella report was obtained, only one of the agreements was recorded on it i.e. agreement relating to Fronwen School was still not recorded on the Ocella system.</p> <p>No files could be traced within the Planning Department for the other three agreements. They are:</p> <ol style="list-style-type: none"> 1) Agreement number 2192 relating to Brackla Hill, the deed book contains no details as to who the agreement is between. 2) Agreement number 2334, agreement between Celtic Energy, BCBC and Neath Port Talbot Council, deed book does not make reference to the development site, but it is likely to be connected to the agreement below. 3) Agreement number 2145, agreement between Celtic Energy and BCBC at Park Slip West open cast site. <p>A further test was carried out to compare the information reported to the Planning and Development Committee and the Ocella system. Information relating to six S106 agreements was included on the report to the Committee; however no details for these agreements could be traced on the Ocella system. Again this was queried with the Senior Planning Assistant.</p> <p>It was explained that two of the applications were not S106 agreements, hence why they were not recorded on the Ocella system or in the deed book as such. The remaining four were all S106 agreements and all should have been recorded on the Ocella system. An updated report from Ocella confirmed that three of the four are now included, however one still has not been input. This is the agreement is with Clerical Medical / David Wilson Homes and relates to land south of Coychurch Road.</p>	<p>Documentation relating to the three S106 agreements recorded in the deed book but not on the Ocella system should be traced, and the Ocella system updated accordingly.</p> <p>The Ocella system should be updated to include details of the two applications identified during the audit that do not appear on the system, namely the development at Fronwen School, Ogmores Vale and the development on the land south of Coychurch Road.</p> <p>The Legal Department should ensure that the deed book contains sufficient information about parties involved in an agreement and brief details of the agreement i.e. location of the development in order for contracts to be cross referenced to the Planning Department's records.</p>	<p>Significant</p> <p>Significant</p> <p>Merits Attention</p>

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.6 (cont)	(Continued)	(Continued)	<p>To confirm that the Ocella system is fully up to date for those agreements have been entered, a comparison was made to the Section 106 Agreements Report presented to Planning and Development Committee. It was noted that in fourteen cases the report to the Committee stated that money in relation to the S106 agreement had been received, however the Ocella system does not reflect this.</p> <p>Through discussions with staff both in the Planning Department and in respective departments, it was established that at the current time there is no system in place requiring departments to feed back information about the progress or completion of S106 agreements to the Planning Department in order for the Ocella system to remain up to date.</p>	<p>It should be ensured that relevant staff in the Planning Department are informed of all future S106 agreements and the Ocella is updated to reflect this.</p> <p>A nominated person in each department should inform the Planning Department on a periodic basis of any updates in relation to S106 agreements. The Ocella system should be kept up to date with this information.</p>	<p>Significant</p> <p>Significant</p>

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.7	To ensure that the Planning and Development Committee are kept informed of S106 agreements and that the information presented to them is accurate.	That the Planning and Development Committee are misinformed about the status of current S106 agreements.	<p>The first monitoring report was presented to the Planning and Development in February 2006. Previously the Planning and Development Committee had not been provided with any summary information on S106 agreements entered into by the Authority. The report was compiled using information contained within the Ocella system and the knowledge of Principal Planning Officer. Where it was known that S106 agreements had been completed i.e. money received and spent / works completed, these were not included on the report.</p> <p>At the time of this first report being produced, no details had been obtained from departments as to their believed status of the S106 agreements applicable to them. The report concluded by requesting a senior officer within each of the three main departments to report back to the April 2006 Committee meeting with detailed information of when monies that have been received are to be spent. . It was confirmed that a report was provided by the Housing Manager and the Assistant Director Transport and Engineering of the S106 agreements relevant to their department. No update report was provided in relation to Parks S106 agreements.</p> <p>It is felt that both of the update reports submitted to the Committee could contain more detail than has been provided. For example the Housing agreement relating to Southgate Estates is for £100,000 to be paid after the sale of 24th unit. The report does not state if work has commenced on building these units and if so, if any have been sold. The Transport and Engineering report gives details of the money received and pending, although it does not state if any of the money already received has already been spent.</p>	<p>It should be ensured that departments are contacted to confirm that those agreements assumed to be completed and therefore not included on the monitoring report, have actually been completed. The Ocella system should be updated to reflect this.</p> <p>Regular (quarterly) detailed reports should be produced for the Planning and Development Committee where S106 agreements are in place, to update them on the status of existing S106 agreements. The Ocella system should be updated to reflect the information supplied.</p>	<p>Merits Attention</p> <p>Merits Attention</p>

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.8	<p>To ensure that departments / directorates have a nominated person who is responsible for the management and monitoring of S106 agreements. That monitoring of S106 agreements takes place at a department level.</p>	<p>That S106 agreements are not monitored resulting in lost income or building work or the need to repay funding due to non-compliance with the terms and conditions of the agreement.</p>	<p>Each department had a nominated person to whom the original application would be passed for review and comments to be made if necessary. It was also confirmed that a level of monitoring of S106 agreements does take place in each of the two departments visited.</p> <p><u>Parks</u> The department does not have a database or a similar record of all S106 agreements entered into and the current status of these agreements. It is understood that files are retained by the Development Assistant relating to each agreement, but not a detailed list that can be used for monitoring S106 agreements. The department are provided with financial information from the Principal Finance Officer for Leisure. This information has been compiled from the records held on Cedar. Whilst the financial information provided to the department allows a certain level of monitoring, it is noted that the department also has a number of agreements where money is yet to be received or where building work is to take place. Therefore details of these agreements will not be included on the report from the Principal Finance Officer thus monitoring may not take place. It is also noted that three of the amounts / descriptions on the report from the Finance Officer could not be identified on Planning Department records, suggesting either inaccuracies in Planning Department records or a miscoding on the Cedar system.</p> <p><u>Transport & Engineering</u> Within this department, the Client Manager retains a record of the monies that have been received in relation to S106 agreements and the amounts that have subsequently paid out. This record has only started to be kept since 2003/04. Like the Parks records, the information held is only where money has already been received. Where money is due but has not yet been received or where the condition is for building work to take place, no details are recorded and therefore monitoring may not take place. It was noted that one of the amounts / descriptions on the report from the Client Manager could not be identified on the Planning Department records.</p>	<p>All departments where S106 agreements are in place should maintain a suitable record for the monitoring of those agreements. It should be ensured that when the record is established differences between the departments own existing records, Planning Department records and Finance records are eliminated.</p>	<p>Significant</p>

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.8 (Cont)	(Continued)	(Continued)	<p>It was established that staff in both departments visited felt strongly that their responsibility for monitoring S106 agreements starts when money has been received. In contrast through discussions with staff in the Planning Department, it was their belief that as soon as a S106 agreement had been reached and the department informed of this (regardless of whether it was for money or building works) that responsibility for monitoring transfers to the relevant department. This apparent gap in responsibility and therefore monitoring may explain why departments do not maintain monitoring reports where money has not been received. This gap in monitoring means that the trigger points of S106 agreements are not being monitored which may result in them passing with no enforcement action taken.</p>	<p>The Planning Department should be responsible for monitoring S106 agreements and their trigger points to ensure that money is received / work commences as agreed in S106 contract.</p> <p>An agreement should be reached between the Planning Department and other departments as to when the responsibility for the monitoring of S106 agreements, , passes from Planning to the relevant department.</p>	Significant
4.1.9	To ensure that departments are informed of the successful negotiation of S106 agreements and are provided with adequate details for their future monitoring.	Departments do not know that a S106 agreement has been negotiated on their behalf and are not made aware of the trigger points within the agreement to allow future monitoring.	It was confirmed from the departments visited that they have been informed of S106 agreements entered into, through receiving a copy of the contract. However some expressed concerns about the format that this information was supplied to them. For complex, multi department agreements, some staff felt that being provided with a copy of the contract was confusing and meant the contract had to be studied in detail to extract the information applicable to their department.	Consideration should be given to the production of an agreement fact sheet that provides departments with basic details of the S106 agreement, such as the developer's details, the amount to be paid or work to be completed, the trigger point for payment or work to commence, any deadlines by which money should be spent, etc.	Merits Attention

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.10	To ensure that where monies are due or work to be carried out that this has taken place if the trigger point has been reached.	That S106 agreements are breached resulting in the Authority not receiving the money it is due or not having building work carried out.	<p>From the information recorded on the monitoring report presented to the Planning and Development Committee it is noted that there are six S106 agreements relating Transport and Engineering where money / building works is dependant on a trigger point being received. In addition the Education department has one such agreement and the Housing department has one. There are also two agreements that the Authority has entered into that effect numerous departments, all of which are awaiting a trigger point to be reached before money will be received or building work commenced.</p> <p>A sample of three Transport & Engineering agreements and one multi department agreement were selected for reviewing in more detail. In all T&E cases the trigger point is the commencement of the development. When discussions were held with staff they had not been notified of any of the developments commencing, although they assumed one development had commenced as money had been received. As stated previously departments do not feel that it is their responsibility to monitor agreements prior to money being received thus explaining why the department did not know if the trigger points had been reached.</p> <p>Two departments were met with to discuss the multi department contract (Marlas Farm development). This is a complex development with numerous conditions and trigger points. Neither department was certain that the trigger points relevant to their part of the S106 agreement had been reached.</p> <p>In our view, control is optimised where one department is responsible for the receipt of all income.</p>	<p>See recommendation above (4.1.8)</p> <p>All receipts from developers should be directed to the Planning Department in the first instance.</p>	<p>Significant</p> <p>Significant</p>

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.11	To ensure that monies received have been ear-marked within the relevant department's accounts.	That S106 money received is not used for its intended purpose.	<p>It was confirmed on the Cedar system that a budget code has been set up for S106 income. When reviewed it was confirmed that all income input against this code since 2003/04 relates to S106 agreements entered into by the T&E department. Income relating to Parks agreements has been transferred to a separate balance sheet code.</p> <p>Managers were satisfied that income received from agreements in recent years was spent appropriately however no monitoring is carried out to confirm this. From reviewing the financial reports produced for Parks and T&E, it can be seen that very little of the money received in recent years has been spent - £20,000 of Parks income and £140,000 of T&E income.</p>	Departments should retain suitable records that demonstrate what S106 income has been spent on.	Significant

4.1	Objective	Potential Risk	Test Result	Recommendation	Categorisation
4.1.12	To ensure that a suitable system is in place to inform the Enforcement Officer of any breaches of S106 agreements, thus allowing action to be taken.	The conditions of S106 agreements continue to be breached with no action is taken by the Authority.	<p>The Enforcement Officer sees his role in relation to S106 agreements as one of an information gatherer. He is reliant on being informed (by a department) when a trigger point has been reached but no monies received / work commenced etc. He gathers information about the application and current state of the development and liaise with the developer resolve any issue that has caused the non-compliance. If a developer is refusing to agree with the conditions set out in the S106 agreement, then all information will be forwarded to the Legal department for them to pursue.</p> <p>To date five S106 agreements have been referred to the Enforcement Officer for action to be taken. They relate to the Magistrates Court, Meadow Street and three areas of land at Abergarw Industrial Estate. The Enforcement Officer was informed of these cases through enquires made by the department and by a Development Control Officer who noted work had commenced when visiting a nearby site. Therefore at the current time the Enforcement Officer's work in relation to S106 agreements is reactive and not proactive.</p> <p>These findings reiterate the concerns regarding the monitoring of S106 agreements at the stage between when the agreement has been successfully negotiated by the Planning Department and when monies are received. The Enforcement Officer can only carry out his role when he is informed of cases where conditions of agreements have been breached. However, with the current gap in the monitoring, the Enforcement Officer only gets involved in S106 agreements when raised elsewhere in the department.</p>	A nominated person from the Planning Department should be responsible for liaising with the Enforcement Officer to progress agreements where the conditions have been breached.	Significant

5. Management Action Plan

Rec. No.	Recommendation	Categorisation	Para. No.	Agreed	Management Comments	Officer Responsible	Date to be implemented
1	For larger applications where a number of departments request S106 agreements as part of the planning consent, project groups should be held between all relevant parties and the Planning Department to ensure a collective approach.	Significant	4.1.1	Yes	A development team approach has now been introduced with a protocol in place. If an Assistant Director believes that a project deserves cross directorate involvement, then the protocol will be invoked.	No response received	No response received
2	<p>a) Documentation relating to the three S106 agreements recorded in the deed book but not on the Ocella system should be traced, and the Ocella system updated accordingly.</p> <p>b) The Ocella system should be updated to include details of the two applications identified during the audit that do not appear on the system, namely the development at Fronwen School, Ogmores Vale and the development on the land south of Coychurch Road.</p> <p>c) It should be ensured that relevant staff in the Planning Department are informed of all future S106 agreements and the Ocella is updated to reflect this.</p> <p>d) A nominated person in each department should inform the Planning Department on a periodic basis of any updates in relation to S106 agreements. The Ocella system should be kept up to date with this information.</p>	Significant	4.1.6	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>a) and b) Checks will be made to ensure that relevant updates have been made on the Ocella system.</p> <p>c) This is ongoing.</p> <p>d) Agree that there should be a nominated person in each department, but it is the responsibility of departments to decide who this person is. The quarterly reporting process to the Planning and Development Committee by departments should allow the Planning Department to be kept up to date with information.</p>	No response received	No response received

Rec. No.	Recommendation	Categorisation	Para. No.	Agreed	Management Comments	Officer Responsible	Date to be implemented
3	<p>a) All departments where S106 agreements are in place should maintain a suitable record for the monitoring of those agreements. It should be ensured that when the record is established differences between the departments own existing records, Planning Department records and Finance records are eliminated.</p> <p>b) The Planning Department should be responsible for monitoring S106 agreements and their trigger points to ensure that money is received / work commences as agreed in S106 contract.</p> <p>c) An agreement should be reached between the Planning Department and other departments as to when the responsibility for the monitoring of S106 agreements passes from Planning to the relevant department.</p>	Significant	4.1.8	Yes	<p>a) Agree, but this is something for departments to instigate. In addition, it is felt that the legal obligation lies with the developer and this is controlled through the fact a charge is placed on the land.</p> <p>b) Agreed in principle, but this can not be achieved given the current resource constraints in place within the Planning Department.</p> <p>c) No response received</p>	No response received	No response received
4	All receipts from developers should be directed to the Planning Department in the first instance.	Significant	4.1.10	Yes	This will need to be considered further and decisions made as to how to manage the process. It is felt that if receipts were to be directed to the Planning Department in the first instance, then it would be known what money had been received.	No response received	No response received
5	Departments should retain suitable records that demonstrate what S106 income has been spent on.	Significant	4.1.11	Yes	This should be available through a Management of S106 report being prepared by the Assistant Director.	No response received	No response received

Rec. No.	Recommendation	Categorisation	Para. No.	Agreed	Management Comments	Officer Responsible	Date to be implemented
6	A nominated person from the Planning Department should be responsible for liaising with the Enforcement Officer to progress agreements where the conditions have been breached.	Significant	4.1.12	No	Agreed in principle, but this can not be achieved given the current resource constraints in place within the Planning Department. However the quarterly reporting to the Planning and Development Committee on the status of agreements should assist in identifying cases of non-compliance.	No response received	No response received
7	Consideration should be given to having a de-minimus level below which it becomes uneconomical to pursue the achievement of a S106 agreement.	Merits Attention	4.1.2	Yes	It is felt that £1000 is a sensible lower limit and that Grampian Conditions will apply to smaller developments. <i>Legal Dept. comments:</i> - The issue is in the original consideration of the need for a S101 and the instructions. The proposed costs need to be realistic so that such a drop in estimate does not take place. A de-minimus level may be of use as an original consideration of costs but it will not stop subsequent negotiation. The negotiation should not be significant if the original cost is accurate.	No response received	No response received
8	Schemes that are reliant on funding from a number of developers before they can progress, should be monitored by the Planning Department to ensure money is repaid where applicable.	Merits Attention	4.1.3	No	It is felt that this is a responsibility for departments to manage as the Planning Department has no power to tell other departments how and when to spend money secured as a result of a S106 agreement. These schemes should be included in the quarterly report to Planning & Development Committee.	No response received	No response received

Rec. No.	Recommendation	Categorisation	Para. No.	Agreed	Management Comments	Officer Responsible	Date to be implemented
9	Consideration should be given by the Planning Department to informing the Senior Solicitor at an early stage of all applications that are likely to contain a S106 agreement and some outline details of the proposed agreement. This will allow a legal opinion to be sought in a timely manner.	Merits Attention	4.1.4	No	<p>This has not proved to be a problem in the past as Planning Department staff will inform the Legal Department as soon as it is known that there is potential for a S106 agreement. This is a very low risk area. Planning and Development Committee reports are now sent to the Legal Department in batches as they are prepared as opposed to waiting for the whole report to be written. This allows the Legal Department additional time to review the report.</p> <p><i>Legal Dept. comments:-</i> I agree with the recommendation although in practice consent to enter the 106 can be made subject to the views of the legal dept allowing subsequent changes (within reason) to be made.</p>	No response received	No response received
10	The Legal Department should consider a more user friendly approach (i.e. electronically) of recording the details retained in the deed book.	Merits Attention	4.1.5		<p>The Planning Department has now introduced a document management system that is currently being used internally and is soon to be available for public viewing via the internet.</p> <p><i>Legal Dept. comments:-</i> We could discuss this. The Authority is moving towards a central register of contracts as opposed to a directorate one. I am not happy to see this department as a central archive as we simply don't have sufficient information. We should only be responsible for live files which you may be aware are managed within the Lexcel standard.</p>	No response received	No response received

Rec. No.	Recommendation	Categorisation	Para. No.	Agreed	Management Comments	Officer Responsible	Date to be implemented
11	The Legal Department should ensure that the deed book contains sufficient information about parties involved in an agreement and brief details of the agreement i.e. location of the development in order for contracts to be cross referenced to the Planning Department's records.	Merits Attention	4.1.6	Yes	<i>Legal Dept. comments:</i> - Same comment as above, we need to move away from paper systems and into a central record.	No response received	No response received
12	<p>a) It should be ensured that departments are contacted to confirm that those agreements assumed to be completed and therefore not included on the monitoring report, have actually been completed. The Ocella system should be updated to reflect this.</p> <p>b) Regular (quarterly) detailed reports should be produced for the Planning and Development Committee where S106 agreements are in place, to update them on the status of existing S106 agreements. The Ocella system should be updated to reflect the information supplied.</p>	Merits Attention	4.1.7	<p>Yes</p> <p>Yes</p>	<p>Completion is not assumed until the Planning Department have been informed of this by the relevant department.</p> <p>Reports are requested from departments on a quarterly basis for presentation to the Planning and Development Committee. It is felt that it is not feasible for the Planning Department to obtain a high level of detail regarding the exact status of all outstanding agreements.</p>	No response received	No response received
13	Consideration should be given to the production of an agreement fact sheet that provides departments with basic details of the S106 agreement, such as the developer's details, the amount to be paid or work to be completed, the trigger point for payment or work to commence, any deadlines by which money should be spent, etc.	Merits Attention	4.1.9	Yes	Agreed	No response received	No response received

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